

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 22, 2013

Elisabeth A. Shumaker
Clerk of Court

LAWRENCE L. KELLY,

Plaintiff - Appellant,

v.

MARY BOYLES; TOPEKA HOUSING
AUTHORITY;
OAKWOOD/MONTEREY, L.P., d/b/a
Oakwood Manor Apartments,

Defendants - Appellees.

No. 13-3110
(2:08-CV-02425-CM-DJW)

ORDER

Before **HARTZ**, **TYMKOVICH**, and **GORSUCH**, Circuit Judges.

This appeal is jurisdictionally defective because the notice of appeal was filed more than 30 days after entry of the final judgment. 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A).

The district court's final dismissal order and separate judgment were entered in December 2009. The notice of appeal giving rise to this appeal was filed in April 2013, more than three years after the time to appeal expired.

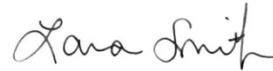
The district court declined to provide relief to the plaintiff by reopening the time to file an appeal. *See* Fed. R. App. P. 4(a)(6). This court has no authority to extend the time to appeal. *Id.* 26(b)(1).

Because a timely notice of appeal in a civil case is both mandatory and jurisdictional, *Bowles v. Russell*, 551 U.S. 205, 213-15 (2007), this court lacks jurisdiction to consider the appeal.

Additionally, the plaintiff already filed an appeal from the final judgment in April 2012, which was dismissed for lack of prosecution. Case No. 12-3119 (10th Cir. Order May 15, 2012). Filing a second appeal from the same judgment is not permitted by the federal appellate rules.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Lara Smith".

by: Lara Smith
Counsel to the Clerk